

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

v.

JOSEPH S. FORTE,

Defendant.

CIVIL ACTION NO.:

~~(PROPOSED)~~ **CONSENT ORDER OF PRELIMINARY INJUNCTION AND  
OTHER EQUITABLE RELIEF**

Plaintiff Commodity Futures Trading Commission ("Commission") has filed a Complaint against Defendant Joseph S. Forte ("Forte") seeking injunctive and other equitable relief, as well as civil monetary penalties, for violation of the Commodity Exchange Act, as amended (the "Act") 7 U.S.C. §§1 *et seq.* (2006), as amended by as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act ("CRA")), § 13102, 122 Stat. 1651 (effective June 18, 2008), to be codified at 7 U.S.C. §§1 *et seq.*

Defendant Joseph S. Forte ("Forte"), without admitting or denying the allegations of the Complaint for purpose of this Consent Order of Preliminary Injunction and Other Equitable Relief ("Order"), but admitting to allegations referring to jurisdiction and venue as stated below, consents to the entry of this Order and states that this Order is entered into voluntarily and that no promise or threat has been made by the Plaintiff Commission, or any member, officer, agent, or representative thereof, to induce him to consent to this Order. Further, Defendant Forte enters a general appearance, waives service of a summons and the complaint, waives findings of fact and conclusions of law and waives any right to appeal from this Order.

**THE PARTIES AGREE AND THE COURT FINDS AND ORDERS THAT:**

1. This Court has jurisdiction over the parties and over the subject matter of this action pursuant to Section 6c of the Commodity Exchange Act, as amended (the "Act") 7 U.S.C. § 13a-1 (2006).
2. Venue lies properly within this District pursuant to Sections 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006).
3. There is good cause to believe that the Defendant has engaged, is engaging and/or is about to engage in acts and practices constituting violations of the Act, 7 U.S.C. §§ 1, et seq. (2006)
4. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for commodity pool participants in the form of monetary redress will occur from the sale, transfer, assignment, or other disposition by Defendant of assets or records unless Defendant is immediately restrained and enjoined by Order of this Court.
5. Good cause exists for the freezing of assets owned, controlled, managed or held by, on behalf of, or for the benefit of Defendant (hereinafter "Defendant's Assets") in order to assure payment of restitution and disgorgement as authorized and for the benefit of pool participants
6. Good cause exists for entry of an order prohibiting Defendant, his agents, servants, employees, assigns, attorneys, and persons in active concert or participation with the Defendant from destroying records and denying agents of the Commission access to inspect and copy records to ensure that Commission representatives have immediate and complete access to those books and records.
7. Good cause exists to permit expedited discovery before the early meeting of counsel pursuant to Rule 26(d) of the Federal Rules of Civil Procedure, in order to ascertain the

existence and location of assets, clarify the source of funds, and identify all pool participants and other investors.

8. Good cause exists to require an accounting to determine the location and disposition of pool participants' funds.

9. Good cause exists to order repatriation of assets controlled by Defendant to assure payment of restitution and disgorgement as authorized and for the benefit of pool participants.

10. Weighing the equities and considering the Commission's likelihood of success in its claims for relief, the issuance of a statutory restraining and preliminary injunction order is in the public interest.

#### **DEFINITIONS**

For the purposes of this Order, the following definitions apply:

11. The term "document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes, but is not limited to, writings, drawings, graphs, charts, photographs, audio and video recordings, computer records (including, but not limited to, floppy diskettes, hard disks, ZIP disks, CD-ROMs, optical discs, backup tapes, printer buffers, smart cards, memory calculators, pagers, personal digital assistants such as Palm Pilot computers, as well as printouts or readouts from any magnetic storage device), and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

12. "Assets" means any legal or equitable interest in, right to, or claim to, any real or personal property, including but not limited to: chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes,

accounts including bank accounts and accounts at financial institutions, credits, receivables, lines of credit, contracts including spot and futures contracts, insurance policies, and all cash, wherever located.

13. "Defendant" means Joseph S. Forte and for all parties includes any person insofar as he or she is acting in the capacity of an officer, agent, servant, employee, or attorney of the Defendant, and any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in concert or participation with Defendant.

### **RELIEF GRANTED**

#### **I.**

#### **PROHIBITION FROM VIOLATIONS OF THE ACT**

14. Defendant Forte, all persons insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, or attorneys of Forte, and all persons insofar as they are acting in active concert or participation with Forte who receive actual notice of this Order by personal service or otherwise, shall be prohibited and restrained from directly or indirectly :

A. knowingly, willfully or recklessly (1) cheating or defrauding or attempting to cheat or defraud other persons; (2) making or causing or causing to be made false reports or statements to such other persons; and/or (3) deceiving or attempting to deceive such other persons, in or in connection, with orders to make, or the making of, any commodity for future delivery, for or on behalf of such persons, in violation of Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006), with respect to acts occurring before June 18, 2008, and in violation of Sections 4b(a)(1)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C), with respect to acts occurring on or after June 18, 2008, the effective date of the CRA.

B. violating Section 4o(1) of the Act, 7 U.S.C. § 6o(1) by making use of the mails or any means or instrumentality of interstate commerce to employ a device, scheme, or artifice to defraud commodity pool participants or prospective pool participants, or engaging in transactions, practices or courses of business which operate as a fraud or deceit upon pool participants or prospective pool participants, and

C. violating Section 4m(1) of the Act, 7 U.S.C. § 6m(1) by making use of the mails or any means or instrumentality of interstate commerce in connection with a business as a commodity pool operator, unless first registered with the Commission;

## II.

### **ORDER AGAINST TRANSFER, DISSIPATION, AND DISPOSAL OF ASSETS**

**IT IS HEREBY ORDERED** that:

15. Defendant is restrained and enjoined from directly or indirectly transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of any assets, including those held in the name of Defendant, wherever located, including assets held outside the United States, except as provided in Paragraph IV of this Order, or as otherwise ordered by the Court. The assets affected by this paragraph shall include both existing assets and assets acquired after the effective date of this Order.

16. Defendant and his agents, servants, employees, attorneys, and persons in active concert or participation with Defendant who receive actual notice of this Order by personal service except as otherwise ordered by this Court, are restrained and enjoined from directly or indirectly transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of any of Defendant's

assets, wherever located, including assets held outside the United States, except as provided in Paragraph IV of this Order, or as otherwise ordered by the Court. The assets affected by this paragraph shall include both existing assets and assets acquired after the effective date of this Order.

17. Defendant is restrained and enjoined from directly or indirectly opening or causing to be opened any safe deposit boxes titled in the name or subject to access by the Defendant.

### III.

#### DIRECTIVES TO FINANCIAL INSTITUTIONS AND OTHERS

**IT IS FURTHER ORDERED**, pending further Order of this Court, that any financial or brokerage institution, business entity, or person that holds, controls, or maintains custody of any account or Defendant's assets or has held, controlled, or maintained custody of any account or asset of the Defendant at any time since February 1, 1995, shall:

18. Prohibit Defendant and all other persons from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling or otherwise disposing of any such asset except as directed by further order of the Court;

19. Deny Defendant and all other persons access to any safe deposit box that is: (a) titled in the name of the Defendant either individually or jointly; or (b) otherwise subject to access by the Defendant;

20. Provide counsel for the Commission, within five (5) business days of receiving a copy of this Order, a statement setting forth: (a) the identification number of each and every such account or asset titled in the name, individually or jointly, of the Defendant, or held on behalf of, or for the benefit, of the Defendant; (b) the balance of each such account, or a description of the

nature and value of such asset as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and (c) the identification of any safe deposit box that is either titled in the name, individually or jointly, of the Defendant or is otherwise subject to access by the Defendant; and

21. Upon request by the Commission, promptly provide the Commission with copies of all records or other documentation pertaining to such account or asset, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs.

#### IV.

#### ACCOUNTING AND TRANSFER OF FUNDS AND DOCUMENTS

**IT IS FURTHER ORDERED** that within five (5) business days following the service of this Order, Defendant shall:

22. Provide the Commission with a full accounting of all Defendant's funds, documents, and assets, including those outside of the United States from February 1, 1995 to the date of this Order;

23. Transfer to the territory of the United States all Defendant's Assets and documents located outside of the United States; and

24. Provide the Commission access to all records of the Defendant held by financial institutions located outside the territorial United States by signing the Consent to Release of Financial Records attached to this Order.

**V.**

**MAINTENANCE OF BUSINESS RECORDS**

**IT IS FURTHER ORDERED** that:

25. Defendant and all persons or entities who receive notice of this Order by personal service or otherwise, are restrained and enjoined from directly or indirectly destroying, mutilating, erasing, altering, concealing or disposing of, in any manner, directly or indirectly, any documents that relate to the business practices or business or personal finances of the Defendant.

**VI.**

**INSPECTION AND COPYING OF BOOKS AND RECORDS**

**IT IS FURTHER ORDERED** that:

26. Representatives of the Commission be immediately allowed to inspect the books, records, and other documents of the Defendant and his agents including, but not limited to, electronically stored data, tape recordings, and computer discs, wherever they may be situated and whether they are on the person of the Defendant or others, and to copy said documents, data and records, either on or off the premises where they may be situated; and

27. Defendant and his agents, servants, employees, attorneys, and persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, including facsimile transmission, shall cooperate fully with the Commission to locate and provide to representatives of the Commission all books and records of the Defendant, wherever such books and records may be situated.

**VII.**

**BOND NOT REQUIRED OF PLAINTIFF**

**IT IS FURTHER ORDERED** that:

28. Plaintiff Commission is an agency of the United States of America and, accordingly, no bond need be posted by the Commission.

**VIII.**

**ORDER PERMITTING EXPEDITED DISCOVERY**

**IT IS FURTHER ORDERED** that:

29. The prohibition upon discovery before the early meeting of counsel is removed pursuant to Rule 26(d) of the Federal Rules of Civil Procedure.

30. The prohibition upon the immediate commencement of depositions is removed pursuant to Rule 30(a)(2)(C) of the Federal Rules of Civil Procedure.

31. The parties may proceed to take the oral deposition of any person upon three calendar days actual notice if the notice is served upon the parties personally or by telecopier to the party's last known business telecopier number.

32. The parties may take the deposition of any person for the purpose of discovering the nature, location, status and extent of assets of the Defendant and the location of any documents reflecting those assets.

**IX.**

**SERVICE OF ORDER**

**IT IS FURTHER ORDERED** that:

33. This Order shall be served on the Defendant by personal service consistent with Federal Rule of Civil Procedure Rule 4(e). All subsequent pleadings, correspondence, notices

required by this Order, and other materials shall be served consistent with Federal Rule of Civil Procedure Rule 4.

X.

**FORCE AND EFFECT**

**IT IS FURTHER ORDERED** that:

34. This Order shall remain in full force and effect until further order of this Court, and that this Court retains jurisdiction of this matter for all purposes.

**IT IS SO ORDERED**, at Philadelphia, Pennsylvania on this 7<sup>th</sup> day of January 2009.

  
UNITED STATES DISTRICT JUDGE

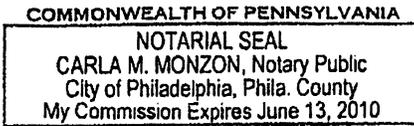
CONSENTED TO AND APPROVED BY:

DEFENDANT JOSEPH S. FORTE

BY: Joseph S. Forte  
Joseph S. Forte, *Pro Se*

DATED: 1/5/09

Carla M. Monzon



Sworn to and subscribed before me  
this 5th day of JANUARY 2009.

PLAINTIFF UNITED STATES COMMODITY  
FUTURES TRADING COMMISSION

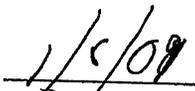
By: [Signature]  
Gretchen L. Lowe, DC Bar No. 421995  
Luke B. Marsh, DC Bar No. 475635  
Division of Enforcement  
Commodity Futures Trading Commission  
1155 21st Street, N.W.  
Washington, D.C. 20581

DATED: 1/7/2009

CONSENT TO DISCLOSURE OF FINANCIAL INFORMATION

I, Joseph S. Forte, do hereby direct any bank, savings and loan, mutual fund, or other financial or brokerage institution (including, without limitation, Citizens Bank, NA; MF Global, Inc., or Lind Waldock & Company) or trust company at which I have a bank account of any kind upon which I am authorized to draw, and its officers, employees and agents, to disclose all information and deliver copies of all documents to every nature in your possession or control which relate to said bank accounts to any attorney of the Commodity Futures Trading Commission, and to give evidence relevant thereto, in the matter of Commodity Futures Trading Commission v. Joseph S. Forte, now pending before the United States District Court for the Eastern District of Pennsylvania, and this shall be irrevocable authority for so doing. This direction is intended to apply to the laws of countries other than the United States which restrict or prohibit the disclosure of bank information without the consent of the holder of the account, and shall be construed as consent with respect thereto, and the same shall apply to any of the bank accounts for which I may be a relevant principal.

  
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JOSEPH S. FORTE

  
\_\_\_\_\_  
Date

  
COMMONWEALTH OF PENNSYLVANIA  
NOTARIAL SEAL  
CARLA M. MONZON, Notary Public  
City of Philadelphia, Phila. County  
My Commission Expires June 13, 2010

Sworn to and subscribed before me  
this 6<sup>th</sup> day of JANUARY, 2009.